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March 28, 2003

Chief of Records
Office of Foreign Assets Control
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Attention: Request for Comments

Re: **Comments of PWG Trading Corp.**

Dear Sir or Madam:

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PWG Trading Corp. ("PWG") appreciates the opportunity to comment on the Office of Foreign Assets Control's ("OFAC") proposed Sanctions Enforcement Guidelines and proposed Appendix to Part 515. PWG provides its comments below:

I. **Proposed Sanctions Enforcement Guidelines**

The proposed Sanctions Enforcement Guidelines (the "Guidelines") specify a number of things, including how OF AC will determine a violation (section I), how OF AC will advise the party of the alleged violation (section II), and how OFAC will determine the amount of civil penalties that may be imposed against the party for allegedly violating the applicable regulations (section III). PWG comments briefly on these sections as follows:

- **Section I(A):** OFAC states that the "U.S. Customs Service" will conduct certain investigations. PWG is not clear whether this will still occur now that Customs is part of the U.S. Homeland Security Department.
- **Section II(A):** OFAC suggests that it may suspend general and specific licenses for one of five reasons identified in this section and possibly for some other (currently unidentified) reasons. The fifth reason under which OF AC will suspend a license is if the alleged party "has committed any other act or omission that demonstrates unfitness to conduct the transactions authorized by the general or specific license." (Emphasis added). PWG does not know what OF AC means by "any other act or omission" and by "unfitness." Does "any other act or omission" mean any act or omission -other than an act or omission identified in (1) through (4) -where the party is not fit? Do reasons (1) through (4) demonstrate that a party is not fit? Or are there other criteria that render a party

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not fit? What are these other criteria? For transparency reasons, OF AC should clarify these terms.

- Section II(B) & (C): The Guidelines also state that OF AC may issue cautionary letters and warning letters in certain circumstances. OF AC will send a cautionary letter when insufficient evidence exists to conclude that a violation may have occurred, but when the activity may lead to a violation in other circumstances. OF AC will send a warning letter when it has concluded that a violation may have occurred. Because these letters have different implications and requirements, PWG respectfully requests that OF AC clearly identify at the top of each such letter whether it is a "WARNING LETTER" or whether it is a "CAUTIONARY LETTER." Otherwise the party receiving the letter may not understand the implications.
- Section III(A)(5): This section refers the reader to the "annual Service Provider Program Circular" for the criteria that OF AC will apply before imposing civil penalties against "service providers holding OF AC authorization." PWG has two comments about this section. First, OFAC's current "annual" circular is Circular 2001. This circular does not identify the enforcement action that OF AC will take against licensed service providers. Nor does it identify any criteria that OF AC will apply when it imposes penalties against licensed service providers. In Part **III** of Circular 2001, OF AC only summarizes the application process, the conditions of operation,¹ and the recordkeeping and reporting requirements. To meet its transparency goals, OFAC must specify (a) the circumstances under which OF AC will issue cautionary or warning letters to, will suspend licenses of, or will impose penalties against licensed service providers and (b) the penalties that OFAC will impose against these service providers.

Second, PWG finds the term "service providers holding OF AC authorization" vague. Circular 200 I identifies three types of service providers: Carrier Service Providers, Travel Service Providers, and Remittance Forwarders. The Guidelines, similarly should specify these service providers. If OF AC intends that this term includes other types of service providers, OF AC should identify them as well, since the Circular does not.

- Section III(A)(6): This section identifies penalties that OF AC may impose against parties that do not respond to OF AC requests for information or that do not comply with the recordkeeping and reporting requirements. For service

¹ Interestingly, Part III(B) of Circular 2001 does not reference Appendices I through **III**, which summarize and/or clarify numerous conditions imposed upon the service providers. In fact, it is not clear to what part or parts these appendices are attached.

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providers licensed to provide services with respect to Cuba, the Guidelines refer to the annual circular. As mentioned above, Circular 200 I does not specify penalties that will be imposed against licensed service providers. OF AC must specify the penalties for these alleged violations.

- Section III(B): PWG has three comments on this section. Bill, PWG is not clear how a party will know that OF AC has balanced mitigating and aggravating factors at the penalty stage. Will the penalty notice indicate how OFAC determined the penalty amount? Will it specify the factors that OF AC has balanced? A party needs this information to determine whether he should challenge the penalty (either by responding to the prepenalty notice or by participating in a hearing) or whether he should seek a settlement. Without this information, the party does not know if OFAC has considered all of the relevant facts and factors.

Second, OFAC encourages in subsection (1) evidentiary submissions indicating the presence or absence of mitigating or aggravating factors. Subsection (1), however, relates only to mitigating factors. PWG would not necessarily understand that OF AC encourages such a submission for aggravating factors. This statement should appear instead in the opening paragraph of Section III(B). PWG also asks that OF AC define "evidentiary submission" and clarify when the alleged party is encouraged to file this document. Does OF AC want this submission when the party seeks settlement, or does OF AC expect the party to know a submission is encouraged at the penalty notice stage (~, when the party may not even know that OF AC is investigating it)?

Third, OF AC makes two references to notice in subsections (1) and (2). Subsection (1)(d) lists as a mitigating factor that the party has implemented a compliance program upon its discovery of the violation or "OFAC notification of the violation." Subsection 2(c) lists as an aggravating factor that the party disregarded "prior notice from [the] U.S. government." The Guidelines do not define "OFAC notification" or "prior notice...,"² OFAC needs to insert either a footnote or provision that clearly defines these terms. To avoid disputes over the notice provided and to establish a clearer record, PWG believes that all notice from OFAC must be written.

² By contrast, the proposed Appendix to Part 515 defines the term "agency notice." As discussed in more detail below, PWG believes OF AC should limit "agency notice" to written notice only.

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II. Proposed Appendix to Part 515

The proposed Appendix to Part 515 (the "Appendix") consists of a schedule of civil penalties that OF AC may impose against travelers and service providers for violating the Cuban Assets Control Regulations (the "Cuban Regulations"). PWG comments on this Appendix below:

- Note: The first note (before section A) refers the reader to subpart G of Part 515 and to the Guidelines in Part 501 for the civil penalty process. The Note, however, does not indicate whether sections I, II, and III of the Guidelines (discussed above) apply to persons who may have violated the Cuban Regulations. In other words, PWG is not clear whether OF AC will send cautionary or warning letters to travelers and service providers, who may have allegedly violated the Cuban Regulations. Nor is it clear that OF AC will balance the mitigating and aggravating factors, which are set forth in the Guidelines, for violators of the Cuban Regulations. This note should clarify whether any parts of the Guidelines apply to the Cuban sanctions program.
- Sections A & B: Through out Sections A and B, OFAC uses the term "agency notice". The Appendix defines "agency notice" as including oral communications between OF AC and parties that may have violated the Cuban Regulations. "Notation[s] of [] telephonic conversation[s]" may document these oral communications. PWG strongly objects to any definition of "agency notice" that includes oral communications or notations of telephonic conversations. This type of evidence is highly subjective and is ripe for misinterpretation and error. OF AC officials may interpret the conversation in one manner, while the affected parties may interpret in another. The parties may not even realize that the OF AC has notified them of possible violations and has requested that they cease the activities. In addition, PWG understands that one or more OF AC officials, who do not speak Spanish as a first language, have communicated in Spanish with travelers and service providers. Depending upon the proficiency levels of the OF AC officials, there may be different interpretations as to the conversations. Moreover, OF AC officials may make brief notations in the administrative record, which do not adequately (and objectively) summarize the conversations. These notations, moreover, are not available to the parties that are subject to the OF AC investigation. The parties may not even know that these notations exist or that they constitute part of the administrative record (or that there is an OFAC investigation). To meet its transparency goals and to provide fair and objective notice to the parties, OF AC must revise this definition to

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require written notice to the affected parties of the alleged violations. Only with written notice will parties have "agency notice."

- Section A(2): OFAC identifies one potential traveler violation as "business travel-related transactions." By listing "business travel-related transactions" as a traveler violation, OFAC has suggested that business travel is prohibited. PWG objects to this suggestion and requests that OFAC either (a) change this teffil to "unlicensed business travel-related transactions" or (b) provide another note clarifying that OFAC will impose the penalties against only those U.S. persons, who engage in unlicensed business travel-related transactions. OFAC has issued specific licenses authorizing persons to travel to Cuba to engage in certain types of business transactions. For example, pursuant to Section 515.545, OFAC has issued specific licenses allowing U.S. persons to travel to Cuba for the purpose of discussing with the relevant Cuban entities the possibility of providing telecommunications services between the United States and Cuba. OFAC also has issued specific licenses authorizing U.S. persons to discuss sales of agricultural commodities and medicines to Cuba. In addition, OFAC has licensed certain PWG employees to travel to Cuba for the purpose of "conducting necessary business ... with Cuban authorities to provide the travel services authorized by §§ 515.560 and 515.572 of the [Cuban Regulations]." These examples demonstrate that OFAC licenses some business travel. This licensed business travel, therefore, does not violate the Cuban Regulations and should not be subject to civil penalties.
- Note B: This note refers the reader to the Guidelines for other violations of the Cuban Regulations. The note also refers licensed service providers to the annual circular. As mentioned above, the current circular is OFAC Circular 2001. This document does not specify the enforcement actions that OF AC may take against licensed service providers. Nor does it specify penalties that OF AC may impose against licensed service providers. OF AC must address these issues in the Guidelines, the Appendix, or the circular.

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PWG has submitted these comments within the comment period, even though OF AC has not provided enough information on the enforcement actions OF AC proposes to take against licensed service providers for allegedly violating the Cuban Regulations. PWG, therefore, requests that OFAC extend the comment period, so that PWG can review OFAC's proposed enforcement actions when the new circular becomes available.

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Thank you for this opportunity to comment on the Guidelines and the Appendix.

Respectfully submitted,


Lonnie Anne Pera
counsel for Marazul Charters, Inc.

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